IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19051 of 2005
To
SPECIAL CIVIL APPLICATION No. 19056 of 2005
With
SPECIAL CIVIL APPLICATION No. 19059 of 2005
To
SPECIAL CIVIL APPLICATION No. 19089 of 2005
With
CIVIL APPLICATION No. 4936 of 2006
To
CIVIL APPLICATION No. 4940 of 2006
In
SPECIAL CIVIL APPLICATION No. 19051 of 2005
With
CIVIL APPLICATION No. 4947 of 2006
In
SPECIAL CIVIL APPLICATION No. 19059 of 2005
With
CIVIL APPLICATION No. 4953 of 2006
To
CIVIL APPLICATION No. 4971 of 2006
In
SPECIAL CIVIL APPLICATION No. 19069 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

RUSHABH TELECOMMUNICATION & 1 - Petitioner(s)
Versus
BHARAT SANCHAR NIGAM LTD. THROUGH CHIEF GENERAL MANAGER & 1 - Respondent(s)

==========

Appearance :
MR PAVAN S GODIAWALA for Petitioner(s) : 1 - 2.
MR DHAVAL M BAROT for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1.0 Department of Telecommunication, Delhi launched a scheme for operating DID Group EPABX under DID Group EPABX Scheme 1994, in the year 1995. In November 2000, Telecom Regulatory Authority of India fixed tariff for end users of DID Group EPABX at Rs.0.90 per MCU for the first 500 MCU per month and Rs.1.10 per MCU thereafter, made by each end user. The Dy. General Manager, Commercial CGM Office, Gujarat Circle vide letter dated 02.01.2001 directed the operators under DID Group EPABX Scheme 1994, to collect unit rate of Rs.0.90 from subscribers and pay Rs.1.10 to B.S.N.L. The petitioners-herein, therefore, filed Special Civil Application No.121 of 2001 and cognate matters, in which this Court on 09.08.2004 passed an order, the operative part of which reads as under,

> "... 9.0 In view of the aforesaid discussion, I do not find any substance in the contention the petitioners have no remedy under section 14 of the Act of 1997. Merely on that ground the petitioners cannot invoke jurisdiction of this Court under Article 226 of the Constitution of India, especially when the decision is a policy decision taken by the appropriate competent authority within

its power and jurisdiction and the decision is to achieve the object of the Act.

9.1 When a competent authority constituted under the Act has taken a decision and which has been accepted by the licensee viz. the respondents, sub-licensee cannot challenge the same merely on the basis that such decision is not favourable to petitioners. The petitioners have not pointed out that the decision of revising the charges is arbitrary or against the public interest. Therefore, it is clear that the petitioners are bound by the terms and conditions imposed in the said notification and the petitioners cannot charge more than Rs.0.90ps upto 500 metered call units per month and Rs.1.10 for calls above 500 metered call units per month.

9.2 A perusal of the decision clearly shows that the decision is taken with a view to attract more consumers and certainly the benefits go to such consumers at large. Apart from that the BSNL will not pay 20 paise commission to the licensee, but that will be adjusted against the rent of Rs.100/- and overhead expenses can be adjusted from Rs.25/-. Thus, when the expert body has taken a decision keeping in mind the consumers at large, this Court will not substitute its decision inasmuch as this Court is not sitting in appeal over the decision of the Expert Committee.

10.1It is also required to be noted that the petitioners were entitled for 20 paise commission for first 10000 calls, and in view of this, BSNL will not be in a position to pay any commission for 10000 calls since they will not be

collecting the same as per TRAI Notification. In light of the above discussion, the terms may be modified by the respondents.

10.2 In the premises aforesaid, I do not find any substance in the contentions raised on behalf of the petitioners. The petition are, therefore, rejected. Rule/Notice, wherever issued, are discharged with no order as to costs. Interim relief, if any, stands vacated. However, it is observed that the respondents will implement the decision of TRAI in its true spirit and will not pay any commission to the petitioners for the first 500 calls per extension and commission will be paid after adjusting this in the bill. In view of the above discussion, the respondent authorities may reconsider the letter dated 2nd January 2001.

10.3 At this stage Mr. Nanavati has requested to continue the interim relief granted in the petition. However, as stated hereinabove, the authorities are duty bound to implement the decision of the respondent no.5 and this Court cannot sit in appeal over the decision of the expert committee, I do not see any reason to extend the interim relief granted earlier especially when the matter involves public money. The request is therefore rejected."

2.0 In the meantime, the petitioners preferred an appeal before the Division Bench of this Court. However, the same was withdrawn at the suggestion of the Division Bench to file a

review petition before the learned Single Judge who passed the judgment dated 09.08.2004. The learned Single Judge, thereafter, vide order dated 21.10.2004 directed the BSNL to pay commission to the petitioners. Pursuant to that the petitioners were issued bill dated 01.12.2004 by BSNL, Bhavnagar charging Rs.1.10 for first five hundred calls. Therefore, the petitioner again approached this Court by way of a petition and stay was granted by this Court on 07.04.2005 in that petition. In in S.C.A. Nos. 156 and 190 filed by the petitioners, this Court passed an order dated 10.05.2005 and directed BSNL not to recover dues prior to December 2004. However, to avoid disconnection of the service, petitioners have paid their monthly bills, except bill dated 01.04.2005, under protest and requested respondent to revise tariff order. The respondent, thereafter, issued a notice dated 22.07.2005 to the petitioners to pay the unpaid bill dated 01.04.2005. The petitioners were again issued a letter dated 01.12.2005 and were

directed to collect Rs.1.10 per unit. The petitioners, therefore, requested respondent to pay the difference of over billing from 1st December, 2004 and to revise tariff order dated 02.01.2001. Since no actions are taken by the respondent, the petitioners have preferred present group of petitions.

3.0 Heard, learned Advocate for the respective parties at length. As a result of hearing and on perusal of the documents placed on record, I am of the view that the ends of the justice would met by passing following order,

3.1 The petitioners shall collectively make a representation to the Central Government i.e. Senior Deputy Director General, B.S.N.L., New Delhi within a period of four weeks from today to reconsider the letter dated 02.01.2001 in accordance with law for the period after 01.12.2004. The said Authority shall consider the representation of the petitioners in accordance

with law and in light of the directions given in the order of this Court dated 09.08.2004, within a period of three months from receipt of the same after affording personal hearing to the representatives of the petitioners.

3.2 In the meantime the petitioners shall file their undertakings within a period of three weeks from today to make payment of their dues after 01.12.2004 to the respondents which were stayed by this Court. Thereafter, they may make a representation within a period of two weeks to the respondents to give them six monthly installments for the payment of their outstanding dues. The said representation shall be sympathetically considered by the respondent authority in accordance with law.

3.3 It shall be open to the petitioners to raise all the contentions before the authority i.e. Senior Deputy Director General, BSNL and the Authority shall consider the same

sympathetically, keeping in mind the judgment of this Court as well as interest of all the parties, and shall decide the same in accordance with law.

3.4 It shall be open for the petitioners to challenge the order of the Authority, if the same is adverse to them.

4.0 With the above observations and directions, the S.C.A.s stand disposed of. No order as to costs.

4.1 Since, the main matters are disposed of C.A.s would not survive and it also stand disposed of accordingly. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/